IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/02/2005

Coram

The Hon'ble Mr.MARKANDEY KATJU, Chief Justice
and
The Hon'ble Mr.Justice C.NAGAPPAN

Writ Appeal No. 131 of 2002 and Writ Appeal No.132 of 2002

K.Rangasamy ... Appellant in
W.A.No.131 of 2002

R.Sarvanan ... Appellant in
W.A.No.132 of 2002

-Vs-

1. Tamil Nadu Housing Board
rep. by its Managing Director,
Mount Road,
Nandanam,
Chennai 600 035. ... 1st Respondent in
both the appeals

2. Executive Engineer & Admn. Officer
Tamil Nadu Housing Board,
Madurai Housing Unit,
Jawahar Street Extension,
Gandhi Nagar,
Madurai 625 020. ... 2nd respondent in
W.A.No.132/02
3. The Manager,
Marketing and Services,
Office of the Executive Engineer,
Tamil Nadu Housing Board,
Gandhi Nagar,
Madurai 625 020. ... 2nd respondent in
W.A.No.131/02 &
3rd respondent in
W.A.No.132/02

Appeals filed under Clause 15 of the letters patent against the orders passed in W.P.Nos. 17187 & 17188 of 2001 dated 20.11.2001.

!For Appellant :: Mrs.Rita Chandrasekaran

^For Respondents :: Mr.D.Veerasekaran

:J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

These writ appeals have been filed against the impugned judgment of the learned single Judge dated 20.11.2001, by which writ petition nos. 17187 & 17188 of 2001 were dismissed by a common order.

2. The facts in detail are given in the impugned judgment of the learned single Judge, and hence, we are not repeating the same, except where necessary.

3. It is evident from the facts that the petitioners/appellants were allotted houses by the respondent/board, and the appellants took possession of the same on 02.01.2001 in pursuance of allotment orders dated 05.12.2002 and 17.11.2000 respectively. The allotment orders state that the selling price of the houses including the tentative costs of the land in respect of W.P.No.17187 of 2001 is Rs.5,79,500/- and in respect of W.P.No.17188 of 2001 it is Rs.10,76,000/-. The orders further state that the petitioners are liable to pay difference in costs if any for the land later consequent on the finalisation of the land cost. The petitioners were directed to pay a sum of Rs.2,31,800/- and Rs.4,60,400/- respectively towards the initial deposit within a period of 30 days, besides executing a lease-cum-sale agreement. The petitioners have alleged that they have complied with the terms and conditions by making the initial deposits as required, and the offers of the petitioners were accepted by the Housing Board, and allotments were made thereafter and possession handed over to them.

4. It is alleged that subsequently, the Government issued G.O.Ms.No.29 dated 22.01.2001 giving certain concessions foregoing certain interest amounts on the houses already constructed. The petitioners wanted to get the benefit of the aforesaid G.O and requested for reduction of the cost of the houses allotted to them. However, the stand of the respondents was that the aforesaid G.O applies to such of those houses which remained unsold as on 31.12.2000. Since the houses were allotted to the petitioners prior to coming into force of the said G.O, and the petitioners have remitted the initial deposits and taken possession of the houses, the prayer of the appellants for reduction of interest was rejected. Aggrieved the petitioners filed the writ petitions.

5. We have carefully perused the G.O.Ms.No.29 dated 22.01.2001. It has been stated therein: -

The houses constructed before 30.06.2000 and remained unsold till 3 1.12.2000, it has been decided to waive interest in respect of amount payable by allottees and the same can be sold at the revised price.

Thus, to get the benefit of the aforesaid G.O, the petitioners have to satisfy the following conditions: -

(i)The houses were constructed before 30.06.2000, and

(ii)It remained unsold till 31.12.2000

6. In the notice dated 17.4.2001 issued by the petitioners advocate it has

been stated that the houses were constructed in the year 1996. Thus, the first condition, as mentioned in G.O dated 22.01.2001 i.e., the houses should be constructed before 30.06.2000, is satisfied.

7. In paragraph-4 of the petitioners affidavit filed in support of the writ petitions, it is stated: -
I state that I was asked to execute a lease cum sale agreement which I have done. As such the house is presently in my possession on lessee and sale will be completed after payment of final price to be fixed by the respondents.

8. It appears that the writ petitions have been dismissed by the learned single Judge by the impugned order without calling for the counter affidavits of the respondents, although the learned counsel for the Housing Board was heard. The learned single Judge has observed in the impugned order: -
The question of unsold houses will not apply to the case of the petitioners since the houses allotted to them have already been sold consequent on the applications made by the petitioners and the orders of allotment passed in their favour and also the execution of the lease-cum-sale agreement. Petitioners have also paid the initial deposit amounts as required by Board. Therefore, it cannot be stated that the sale is not complete and that it was only an allotment order. The allotment orders have culminated in the payment of the amount and taking possession of the houses by the petitioners. The execution of the sale deed, arriving at the final cost of the houses and payment towards the full cost of the houses alone remains for completion of the transaction. Therefore, these houses cannot be brought under the category of unsold houses

9. In our opinion, the view taken by the learned single Judge does not appear to be correct. An immovable property can only be sold by a registered sale deed and not by a mere allotment order. As stated in one of the petitioners affidavit, though the house was given in his possession, he would remain a lessee and would not become a vendee until payment of the final price fixed by the respondents and the final instalment. The allotment order dated 17.11.2000 itself states that it is a hire purchase allotment order. By that order, the petitioners were directed to execute lease-cum-sale agreement. In our opinion, a lease cum sale agreement remains a lease agreement until the final instalment is paid, and it becomes a sale only when the sale deed is executed. Thus, prima facie it seems to us that the houses in question were unsold houses, although allotted to the petitioners, and hence the petitioners were entitled to the benefit of G.O.Ms.No.29 dated 2 2.01.2001.
10. However, we are not expressing any final opinion on this point, as the learned single Judge had dismissed the writ petitions without calling for the counter affidavits. We, therefore, set aside the impugned judgment of the learned single Judge, and remand the matter to the learned single Judge to decide the matter afresh after affording opportunity to the respondents to file counter affidavits. The learned single Judge after taking into account all the relevant materials shall decide as to whether the houses remained unsold till 31.12.2000, so as to entitle the petitioners/appellants to the benefit of the G. O.Ms.No.29 dated 22.01.2001.
11. The writ appeals are allowed with the above observations. The

Registry is directed to post the writ petitions (W.P.Nos. 17187 & 17188 of 2001) for final hearing before the concerned learned single Judge on 22.02.2005. We hope and trust that the learned single Judge will decide the petitions expeditiously after giving respondents opportunity to file counter affidavit. No costs.

Index:Yes
Internet:Yes

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Copy to:

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